IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 30161 of 2006(N)

OS.939/2003 of II ADDL.MUNSIFF COURT, TRIVANDRUM
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PETITIONERS:
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1. K. GOPALAKRISHNAN NAIR, AGED 70,
S/O.KUMARA PILLAI, LALITHA VILASOM,
THALACHIRA, CHEMPAZHANTHY MARIYIL,
ULIYAZHATHURA, THIRUVANANTHAPURAM.

2. GOPAKUMAR, AGED 43,
S/O.GOPALAKRISHNAN NAIR, RESIDING AT DO. DO.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS:

P.K. GOVINDAN POTTI,
PERIYAMANA MADAM, SREEKARIYAM,
CHERUVAKKAL VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.KALKURA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 30161/2006 N

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE JUDGMENT DT. 28/1/2005 IN OS NO. 939/03.

EXT.P1A. COPY OF THE DECREE DT. 28/1/05 IN OS NO. 939/03.

EXT.P2. COPY OF THE ORDER DT. 29/7/2006 IN EA NO. 706/06 IN EP NO. 406/06 IN OS NO. 939/03.

EXT.P3. COPY OF THE OBJECTION DT. 18/09/06.

EXT.P4. COPY OF THE APPLICATION DT. 28/09/06 TO RECALL THE WARRANT.

EXT.P5. COPY OF THE IA NO. 7556/06 DT. 16/09/06 TO SET ASIDE THE EXPARTE DECREE.

EXT.P6. COPY OF THE IA NO. 7557/06 DT. 16/09/06 TO CONDONE THE DELAY.

True copy

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PIUS C. KURIAKOSE, J.

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W.P.(C)No.30161 OF 2006

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DATED THIS THE 9th JULY, 2007

J U D G M E N T

I find merit in the submission of Mr.R.T.Pradeep, learned counsel for the petitioners that Ext.P2 order under which the petitioners have been ordered to be arrested is a non-speaking order. Mr.Pradeep further submitted that as of now, enquiry is going on under Order XXI Rule 40 C.P.C. regarding sufficiency of the petitioners' means to pay the decree-debt and also as to whether they were wilfully negligent in the matter. Counsel also submitted that the petitioners have also filed an application to set aside the ex parte decree.

2. Under these circumstances, I dispose of the Writ Petition directing the execution court to hold up coercive process against the petitioners till such time as the enquiry presently on, regarding the means of the petitioners, is finalised. I also direct the trial court to take an early decision on the application to set aside the ex parte decree.

(PIUS C.KURIAKOSE, JUDGE)

tgl